

SETTLEMENT AGREEMENT

This Agreement ("Agreement") is made and entered into as of February 9, 2011 (the "Effective Date") by and among The Indiana Association of Residential Child Care Agencies, Inc. d/b/a IARCCA, an Association of Children and Family Services ("IARCCA"); the Indiana Department of Child Services ("DCS"); and James W. Payne, director, in his official capacity ("Payne") (DCS and Payne are referred to collectively as "DCS" or the "Defendants").

WHEREAS, IARCCA brought suit against DCS on December 14, 2009, which case DCS removed to federal court on December 23, 2009, and which case was consolidated with another and is pending as 1:09-cv-1574-SEB-MJD (the "Lawsuit"); and

WHEREAS, IARCCA claims in the Lawsuit that DCS and Payne had violated state and federal law by, among other things, failing to promulgate administrative rules for setting the rates paid to providers of services to abused, neglected and delinquent Indiana children ("the providers"), cutting those rates arbitrarily and without notice, failing to follow any established method concerning the setting of rates for providers, and violating 42 U.S.C. 1983 by acting under color of state law in violation of federal law; and

WHEREAS, the Court on January 26, 2010 published an Entry Granting a Preliminary Injunction, preliminarily enjoining DCS from, among other things, changing the rates paid to providers; and

WHEREAS, DCS has denied and continues to deny any wrongdoing, and appealed the preliminary injunction order in the U.S. Court of Appeals for the Seventh Circuit; and

WHEREAS, the Parties desire to settle the Lawsuit and all other controversies and differences between them.

NOW, THEREFORE, in consideration of the premises and the mutual promises set forth herein, the Parties agree as follows:

1. **Rate Cut.** IARCCA's member providers have agreed to accept a decrease in the per diem rates that DCS pays to them for calendar year 2011, in the amount of 5% less than the rates currently paid (hereinafter referred to as the "2011 Rate"), subject to the following provisions:
 - a. With the exception of sections d. and e. below, no provider's 2011 Rate will be cut to an amount less than the IV-E rate established using the cost reports that providers submitted to DCS in Spring, 2010 ("the IV-E floor"). DCS reserves the right to conduct a desk audit on a provider's IV-E rate.
 - b. With the exception of sections d. and e. below, for any provider whose 2011 Rate is below the IV-E floor, DCS will increase their per diem payments to equal the IV-E floor.
 - c. The 5% rate cut applies to Private Secure Facility providers who are also Psychiatric Residential Treatment Facilities (PRTFs), but the DCS rate will not be reduced below the PRTF Medicaid rate of \$321.52.

- d. The rates paid to Child Placing Agencies ("CPAs") for children placed by the DCS local office in Marion County ("Marion County rates") will remain the same as those in effect at the time of this Agreement with no reduction. The rates paid to CPAs for children placed by the DCS local office in Lake County that are below the Marion County rates will be increased to equal the Marion County rates.
 - e. The rates paid to CPAs for children placed by the DCS local office in Lake County that are above the Marion County rates will have a 5% rate reduction but in no case will be lower than the Marion County rates. However, this provision (1(e)) applies to any CPA with rates higher than the standard Lake County level system rates, but does not apply to level 4 rates that have been negotiated for a specific child due to the child's extensive needs.
 - f. Beginning on January 1, 2012, the rates to the providers will be determined by new rules, as discussed in Section 2 below.
2. **New Rules.** DCS agrees to publish, and take any other steps necessary to ensure the enactment of, the administrative rules that are attached hereto as Exhibits A and B and incorporated into this Agreement (the "Rules") to govern the setting of rates for providers beginning in January 2012. DCS agrees not to amend or repeal the Rules, or otherwise to effect any significant changes in the rate-setting process that are inconsistent with the methodology in the Rules, without IARCCA's consent, until two (2) years from the date the Rules are enacted. DCS agrees to develop a Provider Manual that will incorporate the items listed in Exhibit C attached hereto.
3. **Therapy for children placed with CPAs.** For new placements made on or after January 1, 2012, DCS shall refer therapy to the CPA as part of the placement for children in therapeutic and therapeutic plus categories, unless it is in the child's best interest to be referred to a different behavioral health provider.

For placements made before January 1, 2012 and remaining in placement on or after January 1, 2012, DCS shall refer to the existing therapist for continuity and consistency in therapeutic relationships unless it is in the child's best interests to be referred to a different behavioral health provider. If it is in the child's best interest to be referred to a different behavioral health provider, DCS will develop a transition plan in consultation with the CPA.

4. **Dismissal of Lawsuit.** IARCCA shall sign and forward to Defendants' counsel a Stipulation of Dismissal, within ten (10) business days after the effective date of this Agreement. The Stipulation of Dismissal shall stipulate that the parties agree and seek an order from the United States District Court for the Southern District of Indiana that:
- a. Dismisses and releases all of IARCCA's claims against Defendants in the Lawsuit without prejudice including, without limitation, those claims made in paragraphs 13 through 38 of its Verified Complaint for Declaratory and Injunctive Relief filed on December 14, 2009, such that issues resolved by such order cannot be reopened,
 - b. Vacates the court's Order on Preliminary Injunction, and
 - c. Permits either party to enforce any breach of this Agreement or applicable law in this court, without having to exhaust administrative remedies, until thirty (30) days after the date the rates which are the subject of Rules (465 IAC 2-16 and 2-17) first go into effect, which is scheduled for January 1, 2012.

Defendants shall sign and file the Stipulation of Dismissal within ten (10) business days of receipt from IARCCA. If neither party files alleging a breach under paragraph (c) above within the applicable time frame, the parties shall sign and file a Stipulation of Dismissal with prejudice within ten (10) business days of the end of the time frame set out in paragraph (c) above.

5. **Attorneys' Fees and Costs.** DCS will pay to IARCCA the amount of \$198,750 as reimbursement for attorneys' fees incurred in connection with IARCCA's claims against the Defendants in the Lawsuit.
6. **Dismissal of Appeal.** DCS will dismiss the appeal that it filed in the Seventh Circuit Court of Appeals, within ten (10) business days after the effective date of this Agreement.
7. **Applicable Law.** This Agreement shall be construed, interpreted, governed, and enforced in accordance with the laws of the State of Indiana.
8. **Entire Agreement.** This Agreement constitutes the only existing and binding agreement of settlement among the Parties, and the Parties acknowledge that there are no other warranties, promises, assurances or representations of any kind, express or implied, upon which the Parties have relied in entering into this Agreement, unless expressly set forth herein. This Agreement shall not be modified except by written agreement signed by the party against whom modification is sought.
9. **Warranty.** Each party warrants (a) that the person executing this Agreement on its behalf has the authority to do so; and (b) that the matters being released pursuant to this Agreement have not been assigned or otherwise transferred to any other person or entity.
10. **Acknowledgment of Terms.** The Parties have read and understand the terms of this Agreement, have consulted with their respective counsel, and understand and acknowledge the significance and consequence of each such term.
11. **Representation by Counsel.** The Parties hereto agree that they enter into this Agreement after having received full advice from counsel of their choice with respect to this Agreement and all other matters related thereto.
12. **Execution of Documents.** This Agreement may be executed in counterparts, that is, all signatures need not appear on the same copy. All such executed copies shall together constitute the complete Agreement.
13. **Notices.** Notices to the parties under this Agreement will be to the following:

As to IARCCA: 5519 E. 82nd St. Suite A
Indianapolis, IN 46250, Attn: Executive Director

As to Defendants: James W. Payne, Director
Indiana Department of Child Services
302 W. Washington St., E306-MS47
Indianapolis, IN 46204

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date of the last signature herein.

Dated: 2-1-2011

IARCCA, an Association of Children and Family Services

By: Catherine Graham

Its: EXECUTIVE DIRECTOR

Dated: 2-2-2011

Indiana Department of Child Services

By: James W. Payne

Its: DIRECTOR

Dated: 2-2-2011

James W. Payne, director, in his official capacity

James W. Payne

Printed: JAMES W PAYNE